



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/173496

PRELIMINARY RECITALS

Pursuant to a petition filed April 04, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Washington County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on June 21, 2016, at Racine, Wisconsin.

The issue for determination is whether this appeal is timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]

Washington County Department of Social Services
333 E. Washington Street
Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

Petitioner and her spouse both received the same FoodShare overpayment notice. Petitioner here represented her husband at the hearing but his case has to have a separate decision. See case # 173493.

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.

2. Petitioner was sent a FoodShare overpayment notice, dated June 23, 2015, which informed Petitioner that she had been overpaid FoodShare benefits in the amount of \$848.00 for the period of August 1, 2014 to November 30, 2014. It was sent to Petitioner at the above address and does contain appeal instructions. The appeal deadline is noted to be September 21, 2015.
3. This appeal was filed on April 4, 2016.

DISCUSSION

The Division of Hearings and Appeals can only make a decision on the merits of the matter it has jurisdiction, that is to say, legal authority, to do so. One of the components of that legal authority is the requirement that an appeal be timely filed. For FoodShare cases an appeal must be filed within 90 days of the date of a negative action on the case by the agency. *See FoodShare Wisconsin Handbook (FSH), §6.4.1 and 7 CFR §273.15(g)*. Thus the Division of Hearings and Appeals, by law, lost authority to make a decision here after the appeal deadline passed so I must conclude that the Division of Hearings and Appeals does not have authority to make a determination on the merits of this matter as Petitioner did not timely filed her appeal.

For Petitioner's benefit the following describes repayment provisions:

7.3.2.12 Repayments

A member who makes a repayment agreement may not be subject to tax intercept as long as he or she is meeting the conditions of the agreement. If a member's repayment agreement becomes delinquent, which is defined as three missed payments over the life of the debt and has been sent three dunning, or past due, notices, he or she is subject to both tax intercept and monthly repayment.

The policies for monthly repayments are listed on the repayment agreements:

1. Overpayments less than \$500 should be paid by at least \$50 monthly installments.
2. Overpayments \$500 and above should be paid within a three-year period either by equal monthly installments, or by monthly installments of not less than \$20.

CONCLUSIONS OF LAW

That the Division of Hearings and Appeals does not have authority to make a determination on the merits this matter as Petitioner's appeal is not timely.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN

INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 30th day of June, 2016

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 30, 2016.

Washington County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability